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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:ITA:4 – GENIN-143870-02

Date:

September 17, 2002

Dear [REDACTED]:

This is in reply to your letter dated July 30, 2002, concerning the hotel industry's need for tax relief due to an economic slowdown following the terrorist attacks of September 11, 2001. In particular, you have asked for an expansion of the relief set forth in a number of 2001 Internal Revenue Service publications allowing additional time for taxpayers affected by the September 11 attacks to complete like-kind exchanges under § 1031 of the Internal Revenue Code.

Section 1031(a)(1) provides that no gain or loss shall be recognized on the exchange of property held for productive use in a trade or business or for investment if such property is exchanged solely for property of a like kind, which is to be held either for productive use in a trade or business or for investment.

While originally intended to cover only simultaneous exchanges, § 1031 and the regulations thereunder now allow for deferred exchanges of property, provided certain requirements are satisfied. One such requirement, set forth in § 1031(a)(3) and § 1.1031(k)-1(b) of the Income Tax Regulations, provides that any property received by a taxpayer is treated as not of a like-kind if (a) such property is not identified as property to be received in the exchange on or before the day that is 45 days after the date on which the taxpayer transfers the property relinquished in the exchange, or (b) such property is received after the earlier of (i) the day that is 180 days after the date on which the taxpayer transfers the property relinquished in the exchange or (ii) the due date (determined with regard to extensions) for the transferor's tax return for the taxable year in which the transfer of the relinquished property occurs.

In addition, Rev. Proc. 2000-37, 2000-2 C.B. 308, allows for so-called "parking" transactions in which a taxpayer parks the desired replacement property with an accommodation party until such time as the taxpayer arranges for the transfer of the relinquished property to the ultimate transferee. Once such a transfer is arranged, the taxpayer transfers the relinquished property to the accommodation party in exchange for the replacement property, and the accommodation party then transfers the relinquished property to the ultimate transferee. Rev. Proc. 2000-37 also imposes a 45-day identification period and a 180-day exchange period.

Following the September 11, 2001, terrorist attacks, the Internal Revenue Service provided tax relief to many taxpayers affected by the attacks. The publications included Notice 2001-61, 2001-2 C.B. 305, which provided affected taxpayers an

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extension of time to perform certain acts under the internal revenue laws, Rev. Proc. 2001-53, 2001-2 C.B. 506, which postponed the time requirements for exchanges of property under § 1031, and Notice 2001-68, 2001-2 C.B. 504, which further explained the § 1031 relief measures.

Notice 2001-68 sets forth three types of postponements relating to § 1031 exchanges. First, if a taxpayer is an affected taxpayer as defined in Notice 2001-61, then the last day of the identification period or the exchange period, or the last day of one of the periods set forth in of Rev. Proc. 2000-37, is postponed by 120 days if the following requirements are met:

(a) The relinquished property was transferred on or before September 11, 2001, or, in a transaction governed by Rev. Proc. 2000-37, property was transferred to the exchange accommodation titleholder on or before September 11, 2001; and

(b) The identification period or the exchange period, or one of the time periods set forth in Rev. Proc. 2000-37, would have ended on or after September 11, 2001, and on or before November 30, 2001.

Second, if a taxpayer is not an affected taxpayer under Notice 2001-61, then the last day of the identification period or the exchange period, or the last day of any period set forth in Rev. Proc. 2000-37, is postponed by 120 days if (a) the relinquished property was transferred, or, in a transaction governed by Rev. Proc. 2000-37, property was transferred to the exchange accommodation titleholder, on or before September 11, 2001, (b) the identification period or the exchange period, or any time period set forth in Rev. Proc. 2000-37, would have ended on or after September 11, 2001, and on or before November 30, 2001, and (c) it is difficult to meet an identification period or exchange period deadline, or a deadline in Rev. Proc. 2000-37, due to the Terrorist Attack for any one of the several reasons set forth in the notice.

Third, a postponement to September 24, 2001, is granted if (a) the relinquished property was transferred, or, in a transaction governed by Rev. Proc. 2000-37, property was transferred to the exchange accommodation titleholder, on or before September 11, 2001, and (b) the identification period or the exchange period, or any time period set forth in Rev. Proc. 2000-37, would have ended on or after September 11, 2001, and on or before September 17, 2001.

Your letter recommends that the relief granted in Rev. Proc. 2001-53, Notice 2001-61, and Notice 2001-68 be expanded to include all taxpayers engaging in § 1031 exchanges, not just affected taxpayers as defined in Notice 2001-61. Further, you request that the relief not be limited to those taxpayers who transferred their relinquished property on or before September 11, 2001, or, in a transaction governed by Rev. Proc. 2000-37, transferred the property to an exchange accommodation titleholder on or before September 11, 2001. Rather, it is your recommendation that

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relief be extended to property, and in particular hotels, transferred up to 1 year after September 11, 2001.

We thank you for your letter and will certainly consider the recommendations you have made. Should you have any further recommendations or questions concerning this important tax matter, please contact [REDACTED]

Sincerely,

Robert A. Berkovsky
Branch Chief
Associate Chief Counsel
(Income Tax & Accounting)